IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

SECOND APPEAL NO.911 OF 2003

Shri Ratankumar Hariram Bhateja.. Appellant
(Orig.Defendant No.4)

Versus

1. Shri Harendra Chhaganlal Shyamani
2. Shri Chandar Nanakram Bhateja
3. Shri Ramesh Nanakram Bhateja
4. Shri Hundibai Nanakram Bhateja..Respondents

(Respondent No.1-Orig. Plaintiff,
Respondent Nos.2,3,4-Orig.Deft.No.1,2,3)

Adv. Mr. Sugandh Deshmukh i/b. Sangram Pawar for the Appellant
Adv. Mr. Madhav Jamdar for the Respondent

CORAM : S.R. SATHE,J.
DATED : 11/07/2007

P.C.:-

1. Heard both the learned Advocates.

2. The Appellant-Respondent No.4 against whom the decree for possession was passed and confirmed by the First Appellate Court has filed this Second Appeal.

3. Harendra Chhaganlal Shyamani the original Plaintiff filed Regular Civil Suit No.691 of 1980 against the defendants including the present appellant for possession of the suit premises as well as the articles or furniture mentioned in the plaint and for recovery of Rs. 1680/-. It was Plaintiff's case that Plaintiff was having a license in respect of the suit premises for carrying on business and the said business

was given to Nanakram Uttamchand Bhateja as a conductor for conducting the said business on monthly royalty. Agreement to that effect was executed in favour of Plaintiff from time to time. After the death of original conductor Nanakram Uttamchand Bhateja, defendant No.4 was seen while carrying on business in the premises. Plaintiff, therefore, issued notice dated 23/12/1978 to the defendants that the agreement of conducting business stood terminated on the death of Nanakram and as such defendant should hand over the possession of the suit premises alongwith business. As defendant did not comply with the said demand of Plaintiff, Plaintiff filed regular Civil Suit No.691 of 1980 in the Court of CJJD, Pune.

4. The defendant Nos.1 to 3 did not file any Written Statement but the present appellant-original defendant No.4 filed his Written Statement at Exh-22 and opposed the suit claim and contended that the suit premises were in fact leased to Nanakram and only with a view to save the Plaintiff from the provisions of Bombay Rent Act, the agreement of conducting business was entered into. He, therefore, contended that the Civil Court has no jurisdiction and suit is liable to be dismissed.

5. On these pleadings the learned Trial Judge framed issues and after considering the evidence adduced by both the parties came to the conclusion that suit premises were given to Nanakram for conducting the business and to use goodwill of Sweetmeat Mart business of the Plaintiff's father and no tenancy right was in fact created as contended by the defendant. Holding that the said permission for conducting business had come to an end the learned Trial Judge decreed the suit in Plaintiff's favour. The said order was confirmed by the First Appellate Court. Being aggrieved by the same, the original Respondent No.4 has filed the present appeal.

6. In this appeal before me the learned Advocate for the appellant-original respondent No.4 submitted that the substantial question of law involved in this appeal is whether the Courts below had jurisdiction to decide the question as to whether defendant No.4 or his predecessor in title was tenant of the suit premises. As against this, Shri Jamdar, learned Advocate for the Respondent-Original Plaintiff submitted that there was no question of deciding the issue as to whether the defendant is tenant. Plaintiff had specifically averred in the plaint that suit premises were given to

defendant for conducting business under the agreement of conducting and both the Courts below have recorded the finding of fact that the transaction between Plaintiff and defendant was of giving business to defendant for carrying out the same and using the goodwill of the business of the Plaintiff's father. Plaintiff having proved the said claim decree was passed in Plaintiff's favour. He, therefore, submitted that the appeal be dismissed.

7. It is needless to say that the concurrent finding of fact can not be challenged by the Appellant in the present appeal. There is absolutely nothing on record to show that the said finding of the fact is perverse or while recording the same the Courts below have not taken into consideration any material evidence or provision of law.

8. So far as the question of jurisdiction is concerned, it is well settled that the allegation made in the plaint alone decided the forum. The jurisdiction does not depend upon the defence taken by the defendant in the Written Statement. It has been so held in **ABDULLABIN ALI V/S. HALAPPA, AIR 1985 SC 577**.

9. It is very clear that Plaintiff had filed the suit on the basis of conducting agreement. Averments in the plaint were only to the effect that the goodwill of the business of Plaintiff's father was allowed to be used by the defendant and the suit premises were given for only conducting the Sweetmeat Mart business of the Plaintiff and even the furniture in the said premises was also allowed to be used by the defendant and for such use the defendant was to pay monthly royalty. It is also clear that the said monthly royalty was increased from time to time and fresh agreement of conducting was executed. So, merely because defendant had contended in the Written Statement that relations of landlord and tenant as contemplated under Bombay Rent Act was created between Plaintiff and defendant, it can not be said that the Courts below had no jurisdiction to try the suit in question. Both the Courts have only considered whether the case that is made out by the Plaintiff in the plaint is true or not and on that basis suit has been decreed.

10. Thus, it is crystal clear that there is absolutely no question of law much less substantial question of law is involved in the present appeal. Hence, appeal has to be dismissed in limine.

11. The learned Advocate for the Appellant-Original Respondent No.4 submitted that statusquo be granted or some time be granted to vacate the premises. The learned Advocate for the Respondent submitted that if this prayer of the Appellant is to be accepted then the Appellant be directed to deposit the entire amount that is due as per the order passed by the Courts below. Taking into consideration this submission, I pass the following order :-

O R D E R

Appeal is dismissed in limine.

Appellant-original defendant No.4 to pay the Respondent costs throughout and bear his own.

Time is granted till 31/08/2007 to Appellant-original defendant No.4 to hand over the peaceful possession of the suit business alongwith shop premises No.862, Budhwar Peth and furniture as mentioned in the plaint on Appellant at least depositing the amount of Rs.30,000/- in the Court on or before 25/07/2007.

(S.R. SATHE,J.)